

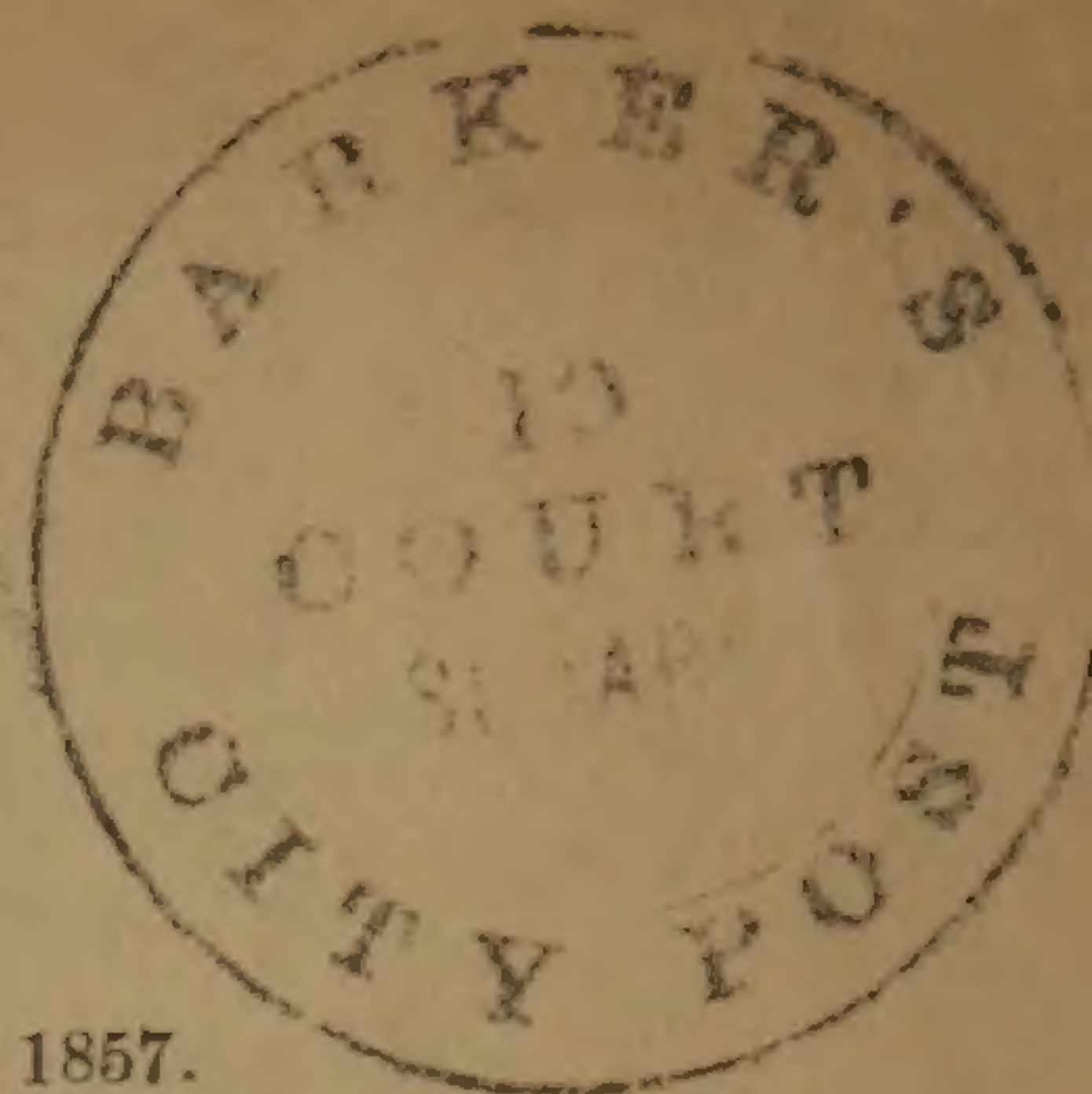
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Suffolk District Medical Society
Report of the Committee on Criminal Abortion

1857

In Page
69 Myrtle St

Suffolk District Medical Society.



MAY 4, 1857.

SIR,

At the February meeting of the Society, Drs. H. R. Storer, Bowditch, and Ellis, were appointed a Committee "to consider whether any further legislation is necessary, in this Commonwealth, on the subject of Criminal Abortion; and to report to the Society such other means as may seem necessary for the suppression of this abominable, unnatural, and yet common crime."

In accordance with their instructions, the accompanying report was submitted by the Committee at the April meeting; and, on motion of Dr. Lyman, it was ordered to be printed.

The Society will hold a Special Meeting for action on the report, on SATURDAY next (May 9), at their Room in Perkins Building, No. 12, Temple Place, at half-past seven o'clock, P.M.

CHARLES D. HOMANS, *Secretary*.

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Dup.
I. H.

R E P O R T.

THE Committee on CRIMINAL ABORTION have attended to the duty assigned them, and would respectfully submit the following report: —

The frequency of Criminal Abortion in this Commonwealth, though already notorious, is much greater than generally supposed; and it is probably steadily increasing. It is confined to no class of persons, — neither the poor, the ignorant, nor the unmarried. Indeed, among the married the crime seems even more common than among those who have the excuse of shame.

These statements might be doubted by gentlemen who, for whatever reason, do not happen to be *personally* familiar with the fact. They are, nevertheless, strictly true. Statistics of abortion do not exist; and, for evident reasons, reliable ones cannot be obtained. The instances of its occurrence, even when accidental, in advanced pregnancy, are but seldom reported to the proper authorities, who acknowledge that many of the so-called still-births are in consequence of induced abortion. “Undoubtedly more than a hundred such yearly escape being recorded (in Boston), a large proportion of which no doubt result from criminal abortion.” (Extract from letter of City Registrar, Mr. Apollonio, to the Committee, March 26, 1857.)

Common as the crime may be in an advanced stage, after the existence of pregnancy has been made certain by its

more evident signs, it is infinitely more common in the early months before motion has occurred, when so many ignorantly believe that the child has therefore not yet received life.

It is impossible for the Committee to furnish statistics in this matter; but lest their premises should be denied, and as the experience of a single individual, it may be remarked, that in no less than *fifteen* instances during the past half-year has the Chairman been called on to treat the confessed results, near or remote, of criminal abortion; and, of these patients, all without exception were married and respectable women. This very prevalence of the crime, which has hitherto obtained to an equal extent only in barbarous or heathen nations, is found almost to protect it. It escapes punishment by law. Many cases, in proof of this, might be instanced from the records of our courts; the three given in the City Registrar's report, just published, for the past year (p. 18), will, however, suffice. It has found public and unblushing defenders, who have so blunted the moral and religious sense of the people, that many respectable women do not hesitate to avow their belief that abortion is no crime.

The impunity with which the crime is committed is mainly owing to four different and separate causes:—

1st, The present *morale* of the community in reference to the subject;

2d, The great caution generally observed by the perpetrators of the crime;

3d, The fact that both operator, where such has been employed, and patient, are extremely desirous of concealment, and so can seldom be produced as witnesses; and

4th, The defective character of the law itself.

To check this evil, a change must be effected in public opinion. By whom shall this change be begun? There is no use in longer silence, or in attempting to conceal what is but too evident. It has clearly become the duty of the medical profession, as the guardians of the public health, if for no higher reason, and as those who, of all others, sooner or later in almost every instance become cognizant of the

crime, to declare its true nature, its prevalence, and its deplorable consequences; to denounce it in unmeasured terms, and, where possible, to point out and to enforce efficient means for its suppression.

The ways in which the popular ignorance respecting its actual guilt, its immediate dangers to the mother, and its effects on subsequent health, can best be enlightened, are self-evident. In private, among his families; in public, from his professor's desk, from the pages of his journal, or from the witness-stand,—the physician is called upon, by every dictate of humanity and religion, to condemn it.

It will be the purpose, therefore, of the Committee at this time to point out to what extent the profession can control the crime through the laws. They may perhaps hereafter take occasion to consider it in some other of its relations to medical men.

Statutes on abortion should be stringent, and faithfully enforced. They should not only punish, but prevent. They should be simple, easily understood, and not to be evaded.

The statutes of Massachusetts are the following:—

SECTION I. LAWS OF 1845. CHAP. 27.

“Whoever maliciously, or without lawful justification, with intent to cause and procure the miscarriage of a woman, then pregnant with child, shall administer to her, prescribe for her, or advise or direct her to take or swallow any poison, drug, or medicine, or noxious thing; or shall cause or procure her, with like intent, to take or swallow any poison, drug, or medicine, or noxious thing;—and whoever maliciously, and without lawful justification, shall use any instrument or means whatever, with the like intent; and any person, with the like intent, knowingly aiding and assisting such offender or offenders,—shall be deemed guilty of felony, if the woman die in consequence thereof, and shall be imprisoned not more than twenty years, nor less than five years, in the State Prison. And, if the woman doth not die in consequence thereof, such offender shall be guilty of a misdemeanor, and shall be punished by imprisonment not exceeding seven years, nor less than one year, in the State

Prison, or House of Correction, or Common Jail, and by a fine not exceeding two thousand dollars."

SECTION II. LAWS OF 1847. CHAP. 83.

"Every person who shall knowingly advertise, print, publish, distribute, or circulate, or knowingly cause to be advertised, printed, published, distributed, or circulated, any pamphlet, printed paper, book, newspaper, notice, advertisement, or reference, containing words or language giving or conveying any notice, hint, or reference to any person, or to the name of any person, real or fictitious, from whom, or to any place, house, shop, or office where any poison, drug, mixture, preparation, medicine, or noxious thing, or any instrument or means whatever, or any advice, directions, information, or knowledge, may be obtained, for the purpose of causing or procuring the miscarriage of any woman pregnant with child, shall be punished by imprisonment in the State Prison, House of Correction, or Common Jail, not more than three years, or by fine not exceeding one thousand dollars."

The above statutes might perhaps seem sufficiently simple and comprehensive; but it will be found that the first of them contains three separate clauses that are not only unnecessary, but that directly tend to prevent the enforcement of the law itself; and it is very likely owing to this fact, as indeed seems proved by similar results in other states and countries where a similar law exists, that so few convictions, so few indictments even, are secured among us.

The objectionable clauses are the following; those rendering it necessary for the Commonwealth to prove, —

1st, The existence of malice or want of lawful justification;

2d, The existence of pregnancy; and

3d, That the agent administered was a "poison, drug, or medicine, or noxious thing."

There can be no possible excuse for the induction of abortion, either in the early or later months of pregnancy, except to save the life of the mother, or of the fœtus within her womb; and so should the law premise. This necessity

can be determined only by experienced physicians; and, in so grave a question, the decision should never be allowed to rest on a single opinion. "The punishment of a crime," it has well been said, "cannot be just, if the laws have not endeavored to prevent that crime by the best means which times and circumstances would allow." In the case in point, by thus clearly defining the crime, greater bars would be put to its commission, and the chances of evading its punishment would be proportionally lessened. It would no longer be necessary for the prosecution to prove malice, or want of justification; for this the law would hold to be evident from the very fact of the attempt.

There could be no injustice to the prisoner, that the burden of proving intent should thus be made to fall upon him. Government, of course, must prove the deed,—in these cases, frequently no easy thing to accomplish; and then should the prisoner be made to show its necessity. If the accused were a medical man, and had held the previous consultation with a brother-practitioner, always proper in cases thus involving life, he would have no difficulty in proving that necessity, if it really had existence.

To require proof of pregnancy from the prosecution is equally needless and absurd. In the early months, this is often impossible to ascertain, where existing; still more so to prove, that, having been terminated, it previously did exist. Pregnancy should be taken for granted, from the very attempt at abortion.

Moreover, deaths have occurred from attempts at abortion, where there was no pregnancy. In these, by our statutes, there could be no punishment, save at common law. Such cases, where pregnancy is proved not to have existed, of course ought not to be called child-murder; yet, so far as the woman's safety and the moral guilt of the accused are concerned, they are, and should be punished as, attempts at miscarriage. The history of the case and the accessory circumstances would always show, where the accused was a physician, whether the operation in question was a legitimate one, as for polypus, retained menses, &c., &c., or not;

or, if the means used were medicinal only, whether the case were one of simple amenorrhœa; and, by any but an educated physician, any such operation or manipulation or course of drugging is, and should be considered, alike unjustifiable, and as premising an evil intent.

It should not be necessary, in the third place, to bring proof that the efficient agent, where one had been given by mouth or rectum, was a poison, drug, or medicine, or noxious thing. Many substances, at other times innocuous, have been found, under the influence of mental excitement, to produce abortion. Much the same reasoning will apply to this clause as to the preceding. If the accused were a physician, he would be able, of course, to furnish good reason for any prescription, did such reason actually exist; and the accessory circumstances in such cases, if he were innocent, would always be in his favor.

The punishment of criminal abortion, by the present statute, is, in cases where the mother does not happen to lose her life, wholly disproportioned to the enormity of the crime. The law is predicated on an entirely erroneous idea. The real intent is seldom against the life of the mother; in almost every instance, she is herself, not merely an accessory, but one of the principals — in what? Not an attempt at the murder of herself, — for that would be simply absurd, — but the murder of her child.

The law is here fundamentally wrong. It utterly ignores the existence of the living child, though the child is really alive from the very moment of its conception, and from that very moment is, and should be considered, a distinct being: this the law does not, however, recognize. The foetus is not, as has so often been alleged, merely *pars viscerum matris*: though upon such belief our law is evidently based.

“It would be hard,” writes an eminent lawyer of this city to the Committee, “to find in the moral law the distinction made in the civil law between causing the death of a child before and immediately after its birth. Before the birth, though the civil law recognizes the existence of the child for some purposes, still, so far as personal injury

is concerned, its being is engrossed, so to speak, in the mother."

The argument that the perils and dangers to which the fœtus is naturally subjected during its intra-uterine life should lessen the criminality of attempts at its destruction, is unworthy the profession, and should not be allowed in law. Those perils do not exceed, if indeed they equal, those which threaten the new-born child. Yet these last would hardly be allowed to invalidate a charge of infanticide.

The crime, when a living fœtus has been destroyed, is clearly MURDER. But, as there are those who will not allow that it should be punished as such, it should in all cases, whether the mother lives or not, be regarded as at least FELONY by the law, which now, in most cases, declares it but a simple MISDEMEANOR. In cases where both lives are lost, its punishment should be proportionally increased. If wilful intent against the life of the mother thus destroyed could ever be proved, the indictment should then be for murder.

An article of the penal code of France, as drawn by Napoleon, provides an increase of punishment where criminal abortion shall have been induced or advised by physicians, surgeons, or other officers of health, or by druggists. We may well imitate this example. If we but determine that the crime must be checked, how great seems the guilt of those who use, to destroy life, that knowledge by which they are pledged to preserve it!

By our statutes, as at present standing, the mother can hardly be reached for her part in the crime. This should no longer be. Unless proved insane, the wretch who had caused the death of her offspring, perhaps by her own hand, should be made to suffer corresponding exposure and punishment. If married, as is too often the case, her crime should be considered as infinitely increased.

Much of the public indifference and error on the subject of criminal abortion is owing to the influence of certain misguided or brutal men, who, by their publications or lec-

tures, have given rise to a belief that the induction of abortion is alike the prerogative and duty of the married. Such offenders, whose guilt should be measured by their numberless victims, are at present beyond the reach of the law; but, as evident criminals, they should be punished. The community should be made to understand and to feel, that marriage, where the parties shrink from its highest responsibilities, is nothing less than legalized prostitution.

Too much zeal cannot be shown by the medical profession in relieving themselves from the weight of responsibility they may incur by innocently causing the increase of criminal abortion. The resort to craniotomy, where, in some cases at least, the child's life might by other means be saved; the frequent repetition of that operation, or of the premature induction of labor before the seventh month, in the same patient, in accordance with the rule, almost universally acknowledged, but still often wrong, that the child's life is as nothing in comparison with that of its mother; the neglect of attempts at resuscitating still-born children, especially where, as the phrase goes, "it is a mercy" if the child were born dead; the fear sometimes shown by medical men to denounce the crime in fitting terms to patients who have confided to them their sin; the occasional carelessness in treatment and mistakes in diagnosis, where proper attention and examination would have shown unmistakable signs of pregnancy; the relying upon a single and unaided opinion, in cases where not one life only, but two, may be involved, — are all instances of apparent disregard of foetal life, that serve with the community as incentives to abortion. Much might be said on each of these points, and on still others; but the Committee are prevented from considering them, at this moment, from the already great length of their report.

The responsibilities, fearful indeed, that rest upon the medical profession, demand that they should possess, should acknowledge, and should govern themselves by, a code of ethics on these great obstetrical questions; in comparison with which all the little matters of professional courtesy, of

parliamentary forms and usage, and of ordinary medical police, that usually engross their public action, are as nothing. The subject is beset with many difficulties; but their removal is only a question of time.

Whatever the duties of the physician, there can be no doubt concerning those of the CORONER, before whom many of the cases of alleged abortion must originally come. He should be, in these cases of all others, a medical man, and should boldly investigate, bring to trial, and press to conviction.

And it is surely the duty of this Committee to urge upon the profession, not of physic alone, but also of law, a more general acquaintance with the true principles and with the details of Obstetric Jurisprudence; through ignorance of which, on the part of attorney, medical witness, or judge, not a few perfectly clear cases of criminal abortion have fallen to the ground.

It is not so much the severity as the certainty of the punishment that will prevent the crime.

In conclusion, the Committee would submit the following draft to the Society for its consideration and approval. If accepted, they would advise, that, as has already been suggested, it be presented to the Parent Society for indorsement at its approaching annual meeting; and that it then be brought before the Legislature of the State, at the earliest possible opportunity, in the name of the Massachusetts Medical Society, and under petition that it may take the place of our present most defective law.

The Committee are well aware, that their draft, carefully prepared though it has been, may be susceptible of improvement; and they desire its examination and discussion by the Society. During its preparation, they have addressed letters of inquiry to distinguished physicians in every part of the Union, and have received answers relative to the statutory laws of twenty-one States, accompanied in several instances by the opinions of leading advocates and judges, for them procured.

They have aimed at a statute, which, while it better defined this atrocious crime, and covered the usual grounds of escape from conviction, established also the proper standard of competence in all medical questions involving issues of life and death. They believe that it would be the means of preventing much of the present awful waste of human life. But enforce this law, and the profession would never allow its then high place in the community to be unworthily degraded; nor, as now, would those be permitted, unchallenged, to remain in fellowship, who were generally believed guilty or suspected of this crime.

SECTION I.

Whoever, with intent to cause and procure the miscarriage of a woman, shall sell, give, or administer to her, prescribe for her, or advise, or direct, or cause, or procure her to take any medicine or drug or substance whatever, or shall use or employ or advise any instrument or other means whatever with the like intent, unless the same shall have been necessary to preserve the life of such woman or of her unborn child, and shall have been so pronounced by two competent physicians; and any person, with the like intent, knowingly aiding and assisting such offender or offenders,—shall be deemed guilty of felony, whether the woman die or not in consequence thereof, and shall be imprisoned not more than ten, nor less than three years, in the State Prison. And if such offence shall have been committed by a physician or surgeon, or person claiming to be such, midwife, nurse, or druggist, such punishment may be increased, at the discretion of the court, to imprisonment not exceeding twenty years in the State Prison.

SECTION II.

Every woman who shall solicit, purchase, or obtain of any person, or in any other way procure or receive, any medicine, drug, or substance whatever, and shall take the same, or shall submit to any operation or other means whatever, or shall commit any operation or violence upon herself, with intent thereby to procure a miscarriage, unless the same shall have been by two competent physicians pronounced necessary to preserve her own life or that of her

unborn child, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the House of Correction not less than three months nor more than one year, or by a fine not exceeding one thousand dollars, or by both said fine and imprisonment; and, if her child be in consequence born dead, she shall be deemed guilty of felony, and shall be imprisoned not more than ten nor less than three years; and, if said offender be a married woman, these punishments may be increased to within twice the limits above assigned.

SECTION III.

Whoever shall encourage, by publication, lecture, or otherwise, the procurement of criminal abortion; and whoever shall in any way aid and abet the same, by advertising, selling, or circulating such publication,—shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment in the House of Correction not less than three months, nor more than one year, or by a fine not exceeding one thousand dollars.

SECTION IV.

Every person who shall knowingly advertise, &c., &c.

This section is the second of the present statutes. It is sufficiently well worded for its purpose; and the Committee would recommend, therefore, that it be retained in its original form. It needs only to be enforced.

HORATIO R. STORER.
HENRY I. BOWDITCH.
CALVIN ELLIS.

APRIL 25, 1857.

Suffolk District Medical Society, *Report...on criminal abortion*
W6 P3 v.7481 box 882 no.14, 1857

Condition when received: The pamphlet was very brittle, weak, wove paper of a dark brown color. The gathering was bound with linen thread. The pages were too brittle to be handled.

Conservation treatment: As a low priority item, only minimal treatment was undertaken. Threads were severed and removed. Encapsulated individual pages in archival plastic using polyethylene terephthalate (2 mil, Light Impressions). Bound plastic pages using 100% cotton covers held together with brass fasteners.

Conservation carried out by Rachel-Ray Cleveland
NLM Paper Conservator 06 / 2006

